

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVID MICHAEL McLENDON,
Plaintiff,

v.

CENTERRE HEALTHCARE,
METHODIST HEALTH SYSTEMS
Defendants.

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CAUSE NO. **3 - 09 CV 0397 - N**

#29302

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

NOW COMES Plaintiff, David Michael McLendon, and files this, his Plaintiff's Original Complaint, and respectfully shows the following:

I.
PARTIES

1. David Michael McLendon is an individual who resides in Dallas County, Texas.
2. Centerre Healthcare is a business entity doing business in the State of Texas, including at 3020 West Wheatland Road, Dallas, Texas 75237. Centerre Healthcare can be served by serving its President and CEO, Patrick Foster, at Centerre's corporate office located at, 5250 Virginia Way, Suite 240, Brentwood, Tennessee 37027.
3. Methodist Health Systems is a business entity doing business in the State of Texas, including at 3020 West Wheatland Road, Dallas, Texas 75237. Centerre Healthcare can be served by serving its Registered Agent for Service of Process, C T Corporation System, at its registered address, 350 N. St. Paul Street Dallas, Texas 75201.

II.
JURISDICTION AND VENUE

4. Subject matter jurisdiction is appropriate. This case arises under the Federal Family Medical Leave Act. The FMLA specifically provides for jurisdiction in federal court.

5. Personal jurisdiction is appropriate. Defendants do business in Texas, have minimum contacts in Texas, and an assertion of jurisdiction of Defendants would not offend traditional notions of fair play and substantial justice.

6. Venue is appropriate. The acts giving rise to this claim occurred in Dallas County, Texas.

III.
FACTS

7. McLendon was employed by Defendants from October 4, 2007 through August 22, 2008 as Director of Patient Care Services for Methodist Rehabilitation Hospital in Dallas, Texas.

8. McLendon's physical place of employment was 3020 West Wheatland Road, Dallas, Texas 75237.

9. Defendants employed at least 50 individuals within 75 miles of 3020 West Wheatland Road, Dallas, Texas 75237.

10. As Director of Patient Care Services, McLendon was an exemplary employee.

11. On his most recent performance evaluation, McLendon was found to be fully satisfactory.

12. McLendon was never placed on any performance improvement plan, never received any written disciplinary action, and never received a verbal reprimand.

13. On August 4, 2008, McLendon learned that a serious medical condition concerning his spine would require surgery.

14. On August 4, 2008, McLendon notified Zandra Faris and Cheryl Luster that he would need to take FMLA leave after October 4, 2008 for approximately six weeks for surgery and recovery.

15. At the time, Zandra Faris was the President of Methodist Rehabilitation Hospital.

16. At the time, Cheryl Luster was director of Human Resources of Methodist Rehabilitation Hospital.

17. On August 22, 2008, McLendon was fired from his job.

18. Defendants have failed to identify just cause for McLendon's termination.

19. Defendants never indicated, prior to McLendon's termination, that he might be terminated. Defendants never notified McLendon, prior to his termination, that Defendants were dissatisfied with McLendon's performance.

20. Contrary to Defendants' progressive, written disciplinary policy, Mr. McLendon never received a written reprimand or verbal reprimand prior to his termination.

21. All conditions precedent to the bringing of this suit have been satisfied or have been fulfilled.

IV.
FIRST CAUSE OF ACTION
RETALIATION UNDER THE FAMILY MEDICAL LEAVE ACT

22. The FMLA prohibits interfering with restraining, or denying, the exercise of rights protected by the Act.

23. This prohibition includes terminating an employee to prevent him from qualifying for leave rights.

24. Defendants terminated Plaintiff because of his attempt to exercise leave rights following his one year employment anniversary.

25. Because of the acts and omissions of Defendants, Plaintiff has suffered damages.

V.
JURY DEMAND

26. Plaintiff exercises his right to trial by jury and tenders the appropriate fee.

VI.
DAMAGES

27. Plaintiff seeks his economic damages, including back and front pay. Plaintiff seeks loss of economic opportunity. Plaintiff seeks damages to his professional reputation and career.

28. Plaintiff seeks compensatory damages for inconvenience, garden variety mental anguish, and such other award as may be allowed by law.

29. Plaintiff seeks liquidated damages in an amount equal to economic damages.

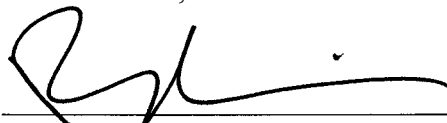
30. Because Defendants' acts were committed with malice or with a reckless disregard to Plaintiff's statutorily protected rights, Plaintiff seeks an award of punitive damages.

31. Plaintiff seeks injunctive relief, including an order to reinstate and restore him to his position, an injunction against further retaliation, and monitoring.

32. Plaintiff seeks his attorney fees.
33. Plaintiff seeks his costs.
34. Plaintiff seeks pre and post-judgment interest at the maximum rate allowed by law.

WHEREFORE, premises considered, Plaintiff respectfully prays that Summons be issued and, that upon a trial on the merits, Plaintiff be awarded all relief requested herein, and such further and other relief as to which he may be justly entitled.

Respectfully submitted,
ROB WILEY, P.C.



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Attorney for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David Michael McLendon

DEFENDANTS

CENTERRE HEALTHCARE and METHODIST HEALTH SYSTEMS

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Wiley, Rob Wiley, P.C., 1825 Market Center Blvd, Ste 385, Dallas, Texas 75207. (214) 528-6500

Attorneys (If Known)

3-09CV0397-N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FAMILY MEDICAL LEAVE ACT

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/26/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____